In the Supreme Court of the United States.

OCTOBER TERM, 1909.

LING SU FAN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 191.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The complaint charged that plaintiff in error, while comprador of a certain steamship *Taming*, when in the port of Manila, placed, concealed, and hid the sum of 20,600 pesos in Philippine silver coin, coined by authority of the act of Congress approved March 2, 1903, in his stateroom on board of said ship, with the intent of exporting same from the Philippine Islands to the port of Hongkong, China, and also that he attempted to export said coins (R., 2, 3). A demurrer was filed thereto, one ground being that the complaint was contrary to the

provisions of the Fourteenth Amendment to the Constitution of the United States, and to paragraph 1, section 5, of the act of Congress of July 1, 1902 (R., 3). The demurrer was overruled (R., 4).

The case was thereupon tried, and plaintiff in error was convicted of the offense charged, and was sentenced to prison for a period of sixty days and fined in the sum of 200 pesos. (R., 39, 41.) From this judgment an appeal was prosecuted to the Supreme Court of the Philippine Islands, and the judgment was there affirmed, the court rendering a lengthy opinion in support of its decision. (R., 43–52.)

The acts of Congress and the acts of the Philippine Commission, upon which the information was drawn, are as follows:

By the act of July 1, 1902, chapter 1369, sections 76 et seq. (32 Stat., 691–710), Congress authorized the government of the Philippine Islands to establish a mint in the city of Manila for coinage purposes, and to enact laws for its establishment and for the striking of certain coins.

By the act of March 2, 1903, chapter 980 (32 Stat., 952), Congress declared that the gold peso, consisting of 12.9 grains of gold, nine-tenths fine, should be the unit of value in the Philippine Islands, and authorized the striking of other coins; and in section 2 thereof provided:

> That in addition to the coinage authorized for use in the Philippine Islands by the act of July first, nineteen hundred and two, entitled

"An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," the government of the Philippine Islands is authorized to coin to an amount not exceeding seventy-five million pesos, for use in said islands, a silver coin of the denomination of one peso and of the weight of four hundred and sixteen grains, and the standard of said silver coins shall be such that of one thousand parts, by weight, nine hundred shall be of pure metal and one hundred of alloy, and the alloy shall be of copper.

Section 6 of this act further provided:

> That the coinage authorized by this act shall be subject to the conditions and limitations of the provisions of the act of July first, nineteen hundred and two, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," except as herein otherwise provided; *and the government of the Philippine Islands may adopt such measures as it may deem proper, not inconsistent with said act of July first, nineteen hundred and two, to maintain the value of the silver Philippine peso at the rate of one gold peso;*

and, as a specific measure for maintaining the parity between the silver and gold pesos, this section authorizes the issue of certificates of indebtedness bearing interest, and payable at periods of time and in the manner therein set forth.

Subsequently, assuming that they had the authority to do so under the foregoing act of Congress, the Philippine Commission passed an act containing the following provisions:

> SEC. 1998. The exportation from the Philippine Islands of Philippine silver coins, coined by authority of the act of Congress approved March second, nineteen hundred and three, or of bullion made by melting or otherwise mutilating such coins, is hereby prohibited, and any of the aforementioned silver coins or bullion which is exported, or of which the exportation is attempted, subsequent to November seventeenth, nineteen hundred and five, and contrary to the provisions of this section, shall be liable to forfeiture under due process of law, and one-third of the sum or value of bullion so forfeited shall be payable to the person upon whose information given to the proper authorities, the seizure of the money or bullion so forfeited is made, and the other two-thirds shall be payable to the Philippine Government, and accrue to the gold-standard fund: *Provided*, That the prohibition herein contained shall not apply to sums of twenty-five pesos or less of the new coins authorized by section two thousand and one hereof and carried by passengers leaving the Philippine Islands.
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> SEC. 1999. The exportation or the attempt to export Philippine silver coins, or bullion made from such coins, from the Philippine Islands contrary to law is hereby declared to be a criminal offense, punishable, in addition

> to the forfeiture of said coins or bullion as above provided, by a fine not to exceed ten thousand pesos, or by imprisonment for a period not to exceed one year, or both, in the discretion of the court. (Comp. acts of the Philippine Commission, 1907, Title 33, ch. 194.)

Plaintiff in error insists that the Commission was without authority to pass this act, because it is inconsistent with the first clause in section 5 of the said act of July 1, 1902, which provides that—

> No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law. (32 Stat., 692.)

ARGUMENT.

I.

An accused is not deprived, under the act of the Philippine Commission, of either his property or his liberty without due process of law.

With reference to the seizure and forfeiture of the money, or bullion made by reducing the same, it is expressly provided that it "shall be liable to forfeiture *under due process of law*," that is, that before such forfeiture can be declared, notice must be given and a hearing had in court, and the judgment of forfeiture must be the result of legal proceedings prosecuted in the usual way.

The exportation of, or attempt to export, the coin or bullion is also declared to be a criminal offense, and punishment is prescribed in case of conviction, but

of course no punishment can be inflicted until a conviction is had by due process of law.

The present proceedings illustrate the manner in which it is contemplated one shall be deprived of his liberty for the commission of the offense declared by the act. Complaint was filed against plaintiff in error in the usual form; he was arraigned in court and pleaded; he had a full and fair hearing, introducing on the trial a number of witnesses on his behalf, as well as testifying himself, and he was represented in court by counsel. From the judgment rendered an appeal was taken by him to the Supreme Court of the Philippine Islands, where a careful and elaborate consideration was given to his case, and now he presents to this honorable court his grounds for reversal and argument in support of same.

Certainly no criticism can be made of this statute for attempting to deprive an accused of his liberty or property without a full and fair hearing and without due process of law.

II.

The act of the Philippine Commission is not invalid because of any direct effect upon the value of the coin, or any restriction upon the right of contract.

It is urged, however, that the Commission was without power to prohibit exportation of the coins in question, or bullion produced by reducing such coins, or to declare the exportation or attempt to export the same a criminal offense.

This insistence is based upon two grounds: (1) That the effect of such legislation is, in a measure, to

affect or destroy the value of the coins, and to that extent deprives the owner thereof of his property; and (2) that such legislation deprives the holder of such coins of his free power of contract with reference thereto, and therefore deprives him of his liberty without due process of law.

These contentions will be considered in the order stated.

1. *The act of the Philippine Commission does not deprive holders of coins of their property within the meaning of the act of Congress, by reducing the value of same; and if their value were reduced, the act was authorized by section 6, chapter 986, act of March 2, 1903.*

(*a*) The value of these coins were not in the least reduced by the legislation. They are declared by said act of Congress to be legal tender, unless otherwise provided, and they had precisely the same purchasing power after the passage of the act of the Philippine Commission as before.

(*b*) These coins were circulating mediums and continually passed from hand to hand, and undoubtedly were not in the possession of plaintiff in error at the time the act was passed, and they, therefore, possessed precisely the same value when seized as when they came into his possession.

(*c*) Under the act of Congress, the Philippine Commission had ample power to enact all reasonable legislation with reference to the circulation of these coins.

While money, which has been coined by a government, is the property of the owner, yet there is attached to it certain qualities of special interest to the public unlike that of any other species of property. By being made by law a medium of exchange, it is given a peculiar value and peculiar characteristics which are subject to change at any time by the authority which created them; and the metal itself, because it bears the impress designed by the Government and is imbued with these peculiar attributes, must be held subject to legislation. Such principle has been recognized in all nations and at all times.

By Article I, section 8, clause 5 of the Constitution, Congress was vested with the power to "coin money, regulate the value thereof, and of foreign coin." The Fifth Amendment was thereafter adopted, which, among other things, provided that no person shall be "deprived of life, liberty, or property without due process of law." Inasmuch as this latter provision was incorporated into the Constitution as an amendment, all the provisions contained in the Constitution as first adopted must be consistent therewith; that is, this amendment repealed or abrogated, by implication, everything in the Constitution which was inconsistent with it, precisely as a subsequent act of Congress repeals by implication all prior provisions of law which are inconsistent therewith; consequently Congress has never, since the adoption of the Fifth Amendment, possessed any authority with reference to the coinage of money and the regulation of its value, which is inconsistent with the due process of

law provision of said amendment. Yet Congress has always assumed without question to pass laws vesting coins with the qualities of legal tender, depriving them of such qualities, regulating the ratio of coinage, and in fact, all character of laws which are deemed of advantage to the public use of such coins.

As an example of such legislation, by the act of May 8, 1792 (1 Stat., ch. 39, sec. 2), Congress went so far as to declare that after a certain date no copper coins except of the character described in the first section should pass current as money; that they should not be paid or received in payment for any debt; that such coins paid or offered should be forfeited, and that any person paying or offering to pay, or receiving the same, should be subject to the forfeiture of the sum of $10. This legislation was for the purpose of calling in all copper coins except those authorized to be coined by that act of Congress.

Again, by the act of February 9, 1793 (1 Stat., 300), chapter 5, section 2, it was declared that at a certain time thereafter all foreign gold coins and foreign silver coins, except Spanish milled dollars and parts of such dollars, should cease to be a legal tender.

Section 5459, Revised Statutes (Penal Code, 165), makes it a serious offense to fraudulently deface, mutilate, impair, diminish, falsify, scale, or lighten gold or silver coins which are coined at the mints of the United States, or to cause the same to be done, or to fraudulently pass, utter, sell, or publish the same, or attempt to do so.

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Section 5189, Revised Statutes (Penal Code, 176), makes it an offense to mutilate, cut, deface, disfigure, or perforate with holes, or unite or cement together, etc., any bank bill, draft, note, etc., issued by any national banking association, or to cause or procure the same to be done, with intent to render such bill or note unfit to be reissued.

A careful review of the financial legislation of the country will show many acts of the same character.

It appears, however, that Congress has never, for the purpose of maintaining the parity between the two metals, or of retaining an adequate supply of them in this country, undertaken to prevent the exportation of either of them, but its failure to enact such a law was not because it did not consider that it was vested with such power. A resolution to that effect was introduced in the Senate during the Fifteenth Congress, and a careful consideration was given thereto by the Finance Committee, which made a report in January, 1819; and in this report, after expressing the opinion that a law prohibiting the exportation of the metals would be unwise and ineffective, and that—

> Commerce is always destined to flourish most where it is permitted to pursue its own paths, marked out by itself, embarrassed as little as possible by legislative regulations or restrictions,

it recommended the adoption of a resolution—

> That it is not *expedient* for Congress to adopt any regulations for preventing the exporta-

> tion of the gold, silver, or copper coins of the United States. (Abridgment of Debates, vol. 6, p. 191.)

These were the views of the committee as to the *wisdom* of such legislation, but it was not supposed or suggested that Congress was not vested with full power to authorize such legislation if it should differ with the view thus expressed.

The conditions existing in the Philippine Islands were such, and its commercial relationship with the Asiatic nations and the medium of exchange between those several countries were of such character, as to induce the Philippine Commission to believe that the most effective way to maintain the parity between the gold and silver pesos was to prevent the exportation of the silver peso; and it is not a question whether the Commission was right or wrong in its view, because they were expressly by said act of March 2, 1903, vested with the power to adopt such measures as they might "*deem proper*" to maintain the value of the silver Philippine peso at the rate of one gold peso; and the judgment of the Commission was not subject to revision by any higher authority.

2. *The act of the Philippine Commission is not inconsistent with the due process of law clause of the organic act of July 1, 1902, in that it restricts or places a limitation upon the right of contract.*

The decisions of this court which, by analogy, sustain this position are numerous. By Article I, section 8, clause 3 of the Constitution, Congress is

vested with power to regulate commerce with foreign nations and among the several States and with the Indian tribes. As heretofore shown, by the Fifth Amendment legislation under this section must conform to the clause providing for due process of law.

In *Patterson* v. *Bark Eudora* (190 U. S., 169, 174, 176) the court had under consideration the act of Congress which prohibited the payment of seamen's wages in advance, and provided that seamen shipped on a foreign vessel from an American port to a foreign port and returned to an American port, who had received a part of their wages in advance, might, after the completion of the voyage, recover by libel filed against the vessel the full amount of their wages, including the advance payment. It was contended that this statute was against the due process of law provision of the Constitution, but it was held that the legislation was warranted by the commerce clause, the court saying:

> Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions for the purpose of securing the full and safe carrying on of commerce on the water. Being so subject, whenever the contract is for employment in commerce, not wholly within the State, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of protecting foreign and interstate commerce.

And as authority for this decision the court quoted the following from *Frisbie* v. *United States* (157 U. S., 160, 165):

> While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property.

Under the commerce clause this court has also sustained acts of Congress which absolutely prohibited the sale of intoxicating liquors to Indians.

> *United States* v. *Holliday* (3 Wall., 407).
> *United States* v. *Forty-three Gallons of Whisky* (93 U. S., 188).

In *Buttfield* v. *Stranahan* (192 U. S., 470, 493) there was presented for determination the constitutionality of the tea-inspection act of March 2, 1897 (29

Stat., 604), by which it was provided that a board of seven members should be appointed, who should prepare and submit to the Secretary of the Treasury standard samples of tea, and upon whose recommendation the Secretary should establish uniform standards of purity, quality, and fitness for consumption of imported teas; and that if on the examination of imported tea it should be found to be inferior to the standard, the consignee should be notified, and if he protested, the question should be referred to a board of appraisers designated by the Secretary; and if the tea should be adjudged inferior by such appraisers, the consignee should execute a bond to export such tea out of the limits of the United States within six months; and if it should not be exported within that time, it should be seized and destroyed. One insistence was that the establishment and enforcement of the standards of quality of teas, which operated to deprive the owner of alleged vested rights, constituted a deprivation of property without due process of law. Upon this question the court said:

> As a result of the complete power of Congress over foreign commerce, it necessarily follows that no individual has a vested right to trade with foreign nations, which is so broad in character as to limit and restrict the power of Congress to determine what articles of merchandise may be imported into this country and the terms upon which a right to import may be exercised. This being true, it results that a statute which restrains

> the introduction of particular goods into the United States from considerations of public policy does not violate the due process of law clause of the Constitution.

Clearly, therefore, there is nothing in the act prohibiting the exportation of the silver pesos coined by the Philippine government which is inconsistent with any clause contained in said act of July 1, 1902, and especially with the due process of law clause, which is the only one relied upon in the assignments of error or in the brief filed on behalf of plaintiff in error in this court.

III.

The act of the Philippine Commission was an authorized exercise of the police power.

The Philippine Commission, in it legislative powers, bears the same relation to the Philippine government as a legislature does to a State. The treaty between the United States and Spain, by which the Philippine Islands were acquired, contained no provision with reference to the laws that should thereafter be in force therein; and, therefore, it was only the political laws that were modified by a change of sovereignty, but those laws which regulated the intercourse and general conduct of individuals remained the same. (*American Ins. Co.* v. *Canter*, 1 Pet., 511, 542; *Leitensdorfer* v. *Webb*, 20 How., 176, 177).

The general tenor as well as the specific provisions of the instructions to the Philippine Commission, signed by President McKinley on April 7, 1900, show that it was his purpose to vest that Commission with

general legislative authority. (Comp. Acts Philippine Com., pp. 10–15.)

By the first provision in the act of July 1, 1902, Congress approved and ratified—

> the action of the President of the United States in creating the Philippine Commission, and authorizing said commission to exercise the powers of government to the extent and in the manner and form, subject to the regulation and control set forth in the instructions of the President dated April 7, 1900.

The commission is therefore vested with full power of legislating, except as restricted by acts of Congress, and manifestly may exercise the police power whenever it might be exercised by the legislature of a State.

The Supreme Court of the Philippine Islands largely rested its decision upon this power, and its discussion of the subject is so full (Rec., pp. 48–50) that no additional comment need be here made.

IV.

The judgment of the Supreme Court and the Court of First Instance should not be reversed on the ground that it is against the weight of evidence and without authority of law.

There are two reasons why the judgment should not be reversed on this ground:

1. *The case is here on writ of error, and this court will not, therefore, review the evidence.*

In *Behn* v. *Campbell* (205 U. S.), which was an action to recover money alleged to be due on account

of labor and materials, the defendant first appealed to this court from the judgment of the Supreme Court of the Philippine Islands, but the appeal was dismissed on the ground that the case could be brought up by writ of error alone. Thereupon a writ of error was obtained, and defendant sought to have reviewed the facts to the same extent as they are reviewed in a case brought up by appeal; and in denying such right of review, the court said:

> But this overlooks the vital distinction between appeals and writs of error which has always been observed by this court and recognized in legislation. An appeal brings up questions of fact as well as of law, but upon a writ of error only questions of law apparent on the record can be considered, and there can be no inquiry whether there was error in dealing with questions of fact (citing a number of authorities).

2. *The decision of the Supreme Court of the Philippine Islands and the Court of First Instance is not against the weight of evidence.*

The Court of First Instance had before it all the witnesses, and the conclusion there reached is given in the following language:

> From the appearance of the witnesses while testifying, who testified that the said coins were brought to the Philippine Islands for the purpose of buying other coins, and from the unreasonableness of the proposition advanced by them, I am unable to give their testimony

> credence. I am unable to believe that any person would send this amount of coin to the Philippine Islands from Hongkong in the care of the defendant, who was an employee, as before stated, on board the steamer *Taming*, without the knowledge of the owners of the vessel or its shipping agent at Hongkong and without the knowledge of the master of the vessel.

The Supreme Court of the Philippine Islands also reviewed the evidence, and were unanimously of the opinion that the testimony given by the witnesses corroborating plaintiff in error was wholly unreliable, and they found that the decision of the lower court was abundantly sustained by the evidence. (Rec., pp. 51, 52.) The testimony of plaintiff in error's witnesses is unreasonable, and contains much internal evidence of unreliability.

It is insisted therefore that the judgment of the court below should be affirmed.

J. A. FOWLER,
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